

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
FREEMAN, : Docket #22cv2435
: 1-22-cv-02435-LLS-SN
Plaintiff, :
- against - :
DEEBS-ELKENANEY, et al., : New York, New York
: July 20, 2022
Defendants. :
----- : Telephone Conference

PROCEEDINGS BEFORE
THE HONORABLE SARAH NETBURN,
UNITED STATES MAGISTRATE JUDGE

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INDEX

E X A M I N A T I O N S

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re-Direct</u>	<u>Re-Cross</u>	<u>Court</u>
None					

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
None				
1				
2				

1 PROCEEDINGS

4

2 HONORABLE SARAH NETBURN (THE COURT): Good
3 afternoon, everybody, this case is Freeman versus
4 Deebs-Elkenaney, the docket number is 22cv2435. May I
5 ask counsel for the plaintiff to state his appearance.

6 MR. MARK PASSIN: Good afternoon, Your Honor,
7 Mark Passin for plaintiff, Lynne Freeman.

8 THE COURT: Thank you. And on behalf of
9 defendants Deebs-Elkenaney and Entangled Publishing,
10 Universal City Studios, Holtzbrinck Publishers.

11 MS. NANCY WOLFF: This is Nancy Wolff from
12 Cowan, DeBaets, Abrahams & Sheppard for Entangled,
13 Holtzbrinck and Universal City Studios and Tracy
14 Wolff.

15 THE COURT: Thank you, my appearance sheet is
16 a little bit --

17 MS. WOLFF: My associate, CeCe Cole is in the
18 room with me here as well.

19 THE COURT: Okay, thank you. And who do we
20 have here on behalf of Crazy Maple Studio?

21 MR. ERIC PLOURDE: Good afternoon, Your Honor,
22 this is Eric Plourde from the Procopio firm appearing
23 for Crazy Maple Studio.

24 THE COURT: Thank you. And who are the
25 remaining defendants I haven't called?

1 PROCEEDINGS

5

2 MR. LANCE KOONCE: Your Honor, this is Lance
3 Koonce with Klaris Law for Emily Sylvan Kim and
4 Prospect Agency, LLC, and I believe our associate Zach
5 Press is on the line as well.

6 THE COURT: Great. Before we begin, I just
7 wanted to mention that I know Ed Klaris who is the
8 namesake of Klaris Law. I obviously have not spoken to
9 him about this case, I just noticed that when I was
10 preparing for today's conference and I certainly would
11 not speak to him, and I don't know when the next time
12 is that I would actually even see him. But I did want
13 to mention that, if anyone thought that that created
14 the appearance of impropriety I'm happy to have the
15 case reassigned to another judge. I personally don't
16 think it does but I'm happy, I want everyone know that
17 and if (indiscernible) more comfortable I'm happy to
18 have the case reassigned. Maybe I'll ask Mr. Passin
19 who might be the most interested?

20 MR. PASSIN: I have no problem, but I would
21 like to run it by my client, but I assume she'd have
22 no problem. For today it's fine, Your Honor, but I
23 don't expect it to be a problem.

24 THE COURT: Okay, I'm intending to rule on the
25 issue before us today, would you rather that I wait

1 PROCEEDINGS

6

2 until you --

3 MR. PASSIN: No, no, that's fine, like I said,
4 I don't expect it to be a problem but I do want to
5 mention it to my client. So you can, we waive any
6 rights, you can definitely rule today, that's fine.

7 THE COURT: Okay, anybody else?

8 MR. KOONCE: Your Honor, this is Lance Koonce
9 again though with Klaris Law Firm, and I should also
10 mention that we are, I have a different case in which
11 we have conflict counsel in the case with Mr. Cuti's,
12 John Cuti's firm. I don't think that also creates a
13 conflict, I just wanted to put that on the record,
14 too.

15 THE COURT: Sure, John Cuti, for those not in
16 the know, is my husband, so I have no idea what that
17 matter is and I'm unaware of the case and certainly
18 won't ask my husband about it. But I didn't even know
19 about that issue so I'll now poll everybody again, now
20 knowing that second potential issue which, as I
21 understand it, is that, I was going to say whether my
22 husband was serving as conflict counsel or Klaris Law
23 was serving as conflict counsel on his matter, but it
24 sounds like there is some relationship between the
25 firm and my husband's law firm. Mr. Passin, again --

1 PROCEEDINGS

7

2 MR. PASSIN: Again, I waive it for today, I
3 don't have any problem, I don't think it will be a
4 problem with my client, but I do feel she's a lawyer
5 and I just want to mention it to her.

6 THE COURT: Fair enough, anybody else with to
7 be heard on that issue?

8 MS. WOLFF: No, Your Honor, we don't have any
9 issues.

10 THE COURT: Okay.

11 MR. PLOURDE: No, Your Honor.

12 THE COURT: All right, thank you. So with that
13 housekeeping matter resolved, I want to talk about
14 this issue. I have the July 12th letter raising the
15 concerns about the protective order. I understand that
16 all of the defendants now believe that an attorneys' eyes
17 only provision is necessary and, if so, that that provision
18 should permit in-house counsel for the corporate defendants
19 to review AEO material but that the plaintiff,
20 notwithstanding her JD, notwithstanding the fact that she's
21 a lawyer, would not be able to serve reciprocal relief,
22 meaning she would not be entitled to review those attorneys'
23 eyes only documents.

24 So before we talk about sort of parity, I'd like
25 to hear from the defendants why they believe this type of

1 PROCEEDINGS 8
2 provision is necessary. I will share with you that in my
3 experience people spend a lot of time fighting over
4 protective orders but not a lot of time actually having
5 relevant litigation once the protective order is entered, so
6 I'm a little concerned that there's a dispute that's being
7 had but doesn't really serve any particular purpose or need.
8 I'm also concerned that AEO just complicates the production.
9 And third, it's not clear to me based at least on the
10 letters that I've reviewed what the, what type of material
11 is likely to be sought and produced that the defendants
12 think cannot be shown to the plaintiff.

13 I don't know who on the defense side is going to
14 take the lead on this issue.

15 MS. WOLFF: Well this is Nancy Wolff, I can start.
16 We included an attorneys' eyes only, we're at the very
17 beginning of discovery, we have, we're representing at this
18 time because of indemnifications four different
19 parties. Two of them are very large companies. We
20 don't know, you know, what documents will be produced
21 yet. We have a very restrictive attorneys' eyes only
22 provision which has a lot of safeguards to make sure
23 that it would not be used unnecessarily but my clients
24 feel that they should at least have the option in the
25 event there is some few documents that might qualify.

1 PROCEEDINGS

9

2 We, of course, don't intend to rubberstamp anything
3 attorneys' eyes only and even the way we drafted the
4 provision there is it is just the party would have to
5 have a good faith belief that it was highly
6 confidential or highly sensitive and it would have to
7 have an effect on business or commercial strategies,
8 (indiscernible) et cetera. There is an entire process
9 in here if one other party disputes if something
10 should be designated that way but, you know, this is,
11 these companies have, you know, we have a major book
12 distributor as well as a motion picture company, there
13 could be some very sensitive viewpoints, we don't know
14 yet. There could also be some unpublished very
15 sensitive material of a, you know, we just don't know.

16 We are starting to gather documents, we're
17 just starting to do document production, but I have
18 generally agreed when I've done other protective
19 orders in other cases, particularly involving
20 copyright and different companies, that there could be
21 this second level for highly sensitive information and
22 it's really there, you know, just in the even there is
23 something that is highly sensitive.

24 So the way we crafted it, it's very limited and,
25 you know, we're very cognizant that most documents will

1 PROCEEDINGS 10

2 be confidential but we don't, you know, we haven't
3 seen everything and there may be some very limited
4 documents that should be attorneys' eyes only.

5 THE COURT: Is your concern showing one
6 client's documents to another client all on the same
7 side of the V, meaning one defendant showing another
8 defendant documents?

9 MS. WOLFF: No. No, it would really be
10 information that's delicate, that perhaps the
11 plaintiffs personally would not need to see, and it
12 could be detrimental.

13 THE COURT: I'm not sure I follow. I could
14 understand why you might be concerned with various
15 publishing houses, for instance, that compete with
16 each other, that are all defendants right now, that as
17 between those defendants maybe you feel like there is trade
18 secrets or other sort of business strategy that you wouldn't
19 want your competitors to see. I would understand that
20 potentially, and that's the purpose for which attorneys'
21 eyes only is generally created. You know, if you have
22 documents that are sensitive that you just think are sort of
23 sensitive for whatever reason, that's why we have a
24 protective order. And so what I'm trying to figure out is
25 what documents do you think are going to be sought and

1

PROCEEDINGS

11

2 produced that are, that would have a detrimental business
3 effect not if the public saw it, but if the plaintiff saw
4 it. And that's when you need attorneys' eyes only, and I'm
5 not sure I see where that would come out here.

6 MR. PLOURDE: Your Honor, this is, I'm sorry to
7 interrupt, Nancy, this is Eric Plourde for Crazy
8 Maple. So, first, I would like to respond directly to
9 your last question but very briefly I would just note
10 that for our client this is of increased concern only
11 because we were named as a defendant a little bit
12 later. So all of the caveats about we're early in the
13 process, we're just getting our arms around the
14 documents that apply to all of the defendants, apply
15 with much greater force to our client who it's been,
16 frankly, a little bit of a whirlwind. I think there as a
17 four month discovery deadline proposed before we had even
18 been served. We discovered the existence of this lawsuit
19 independently. And so, you know, we're really trying to make
20 sure that we're not waiving any rights.

21 And on the specific question about sharing
22 documents with the other defendants, that is a concern for
23 our client. You know, for example, we have a licensing
24 agreement with one of the other defendants, Entangled, that
25 relates to this case, that was disclosed in our initial

1 PROCEEDINGS

12

2 disclosures a few days ago. And we have some concerns about
3 the idea that, you know, we're negotiating with another
4 party, you know, obviously working together but
5 counterparties to contracts and now we are talking about
6 disclosing some potentially very sensitive information about
7 how we are going about calculating whatever it may be,
8 profits, financial information. There are also concerns
9 which relate both to the other defendants and to the
10 plaintiff about the various scripts for the game that's at
11 issue that our client produces. And so --

12 THE COURT: For the various what, sorry, I didn't
13 hear you?

14 MR. PLOURDE: Scripts. So our client produces a
15 video game and is alleged to have infringed on copyright for
16 this book by producing a story as part of that video game
17 that is similar to that book, and so there could be script
18 related to writing for that game that is highly sensitive to
19 our client as well. I think those are the two categories,
20 the scripts and the financial information.

21 And so I just want to jump in because the concern
22 regarding sharing between defendants is sort of a big factor
23 to Crazy Maple and we're a little newer on the scene here,
24 so.

25 THE COURT: Okay, again, I sort of understand both

PROCEEDINGS

13

1 the concern about different corporate defendants, and
2 that might include financial records potentially. I
3 don't know why scripts, for instance, would have to be
4 attorneys' eyes only. I don't know how the plaintiff
5 should be expected to prosecute her claims if she
6 can't review other infringing materials that you might
7 produce in this litigation. So I don't see why the
8 plaintiff needs to be shielded from those types of,
9 that type of information.

10 Again, nobody is disputing a protective order,
11 so nobody is going to publish any of these materials
12 in *The New York Times*, the question is whether or not
13 you need to impose what I think we can all agree makes
14 litigation much more burdensome and complicated and
15 difficult for the parties to actually understand
16 what's going on if there isn't a real need for it.

17 MR. PLOURDE: I understand, Your Honor. I
18 would also add I, you know, I feel a little bit, you
19 know, we have a little bit of a sort of trifecta of
20 arguments going on here that I think is causing a
21 little bit of this stalemate because, for example,
22 from our client's perspective we wanted the attorneys'
23 eyes only provision and I believe that the plaintiff's
24 counsel originally took issue with an AEO provision

1 PROCEEDINGS

14

2 that allowed documents to be shared with in-house
3 counsel which is a provision that our client has no
4 issue getting rid of. I think some of the other
5 defendants want to maintain that if there is an
6 attorneys' eyes only provision it can be shared with
7 in-house counsel but the plaintiff for I believe the
8 sake of parity has said, well, if that's the case then
9 my client should have the ability to see those
10 documents as well.

11 So going back to the issue of this being
12 fairly early in the case, particularly for my client,
13 it seems as though there is some recognition that AEO
14 could be justified, and I agree with the other
15 defendants, it's possible we may not even use the category,
16 but it seems awfully prejudicial at least to me that we
17 would waive the ability to be able to do that at any point
18 in discovery essentially because one of our co-defendants
19 who, you know, we've been meeting and conferring on these
20 issues but their position is that they need to show these to
21 in-house counsel. I think our position would be that the
22 category should not be eliminated wholesale but that there
23 should be some kind of ruling that resolves the parity issue
24 that plaintiff's counsel has raised.

25 THE COURT: And so what's your proposal?

1 PROCEEDINGS

15

2 MS. WOLFF: Your Honor, this is Nancy Wolff
3 again, I just wanted to comment on your issue of, you
4 know, what may be, I mean, in my experience and I've
5 almost had no protective orders without an attorneys'
6 eyes only, it's used very rarely and has never
7 interfered with any party being able to prosecute
8 their case. The plaintiff is a writer and there could
9 be perhaps some limited issues involving our clients'
10 trade practices that she shouldn't see that would not
11 have anything to do with the merits of the case,
12 because in discovery a lot of documents get scooped up
13 that aren't exactly pointed to the merits of the case,
14 we just don't know that. (indiscernible) the
15 documents that (indiscernible) received are very long,
16 there's many, many documents requested and it will
17 take some time to really go through them. And that's
18 why we made a very sort of strict attorneys' eyes
19 where it would have to comply with the categories that
20 we laid out and it would, it would be very limited.
21 You know, if the only issue is the in-house counsel we
22 can discuss that but none of the defendants wanted to
23 waive the right in limited cases to have this extra level
24 and frankly I've never had anyone every complain about it
25 before in a case in the Southern District. It's just, it's

1 PROCEEDINGS

16

2 there for the rare circumstances where you need it but you
3 don't know when you're starting out if you're going to need
4 it.

5 THE COURT: I'm looking at your definition and it
6 would be any item that has a significant effect on current
7 or future business or commercial strategies or decisions or,
8 two, product, plans or development. And I would imagine that
9 this entire case has to do with product, plans or
10 development.

11 MS. WOLFF: It's actually not, it really has to do
12 whether two works are substantially similar that have
13 already been published.

14 THE COURT: Well wouldn't that necessarily
15 involve investigating how the second work was
16 developed?

17 MS. WOLFF: Well that would be, I don't --
18 that's the creation of a work, not the development,
19 and we would not designate it, we have not, we do not
20 plan to designate documents that deal with the
21 creation of the work as attorneys' eyes only. And
22 we've already discussed with the plaintiff how we have
23 those documents, how these works were all
24 independently created.

25 THE COURT: Would you consent if I were to

1 PROCEEDINGS

17

2 authorize the attorneys' eyes only provision, to
3 language that made clear that it could not be used to
4 designate anything concerning the works at issue?

5 MS. WOLFF: No, that's too broad, designate to
6 the creation of the works at issue, because that's the
7 only relevance to the copyright is whether the author,
8 Tracy, used this underlying manuscript for her "Crave"
9 series.

10 THE COURT: Let me hear from Mr. --

11 MS. WOLFF: There could be some, you know,
12 marketing, there could be some, you know, we just
13 don't know what documents are going to, you know, turn
14 up. But really the heart of this entire case is
15 whether the two, if you put these two works side by
16 side, whether they're substantially similar.

17 THE COURT: Mr. Passin, do you want to weigh
18 in on some of these issues --

19 MR. PASSIN: I absolutely do, Your Honor.
20 First of all, I want to point out that, you know, I've
21 practiced law for 40 years and I've always had a
22 problem with attorneys' eyes only clause. My
23 experience has been that they're abused and it
24 prevents me from properly advising my clients. In my
25 opinion an attorney should not hold any secrets from

PROCEEDINGS

18

1 their clients, all right, and I have to tell you I
2 served my first set of document requests back in I
3 think June the 7th. So it's been over a month, I don't
4 have a single -- I served it on everyone other than
5 Crazy Maple because they were new and I don't have a
6 single document. I asked Ms. Wolff, you know, why
7 don't I have any documents, she said all the documents
8 are, every single document is confidential, okay. So I
9 already know someone that says that I think it's hard
10 to believe that every single document is confidential,
11 all right.

13 There are a few types of cases where it's
14 justified to have an attorneys' eyes only clause,
15 that's a trade secrets case. But this is primarily a
16 copyright case and I don't know if Your Honor looked
17 at the joint letter that was sent to Judge Torres
18 dated July 8th, but you can see in that joint letter
19 what the defendants plan on doing. If you look at footnote
20 1 which I will read to you because you may not have it,
21 it says, and this is the section drafted by the
22 defendants, "It also is irrelevant that plaintiff is not a
23 competitor of the defendants and plaintiff's position
24 ignores the possibility that certain defendants may not want
25 other defendants to have access to specific documents,

1 PROCEEDINGS

19

2 including but not limited to documents relating to royalties
3 and commissions."

4 Well, Your Honor, so they intend on marking as
5 AEO documents relating to royalties and commissions.
6 Now, as we all know, damages in copyright include
7 disgorgement of profits and commissions, and if those
8 are stamped AEO I might as well notify my malpractice
9 carrier now because I can't properly advise my client
10 on how to proceed in the case because of its value or
11 how to settle the case.

12 Moreover, I think there should be no
13 attorneys' eyes only and my -- and, by the way, the
14 stipulation that I proposed has a clause in it that
15 allows the parties if they think something should be
16 stamped attorneys' eyes only to confer with counsel
17 and then if there's a dispute to go to Your Honor. Now
18 if despite all this you're still going to want an
19 attorneys' eyes only clause, my client is an attorney
20 and I have to tell Your Honor I treat her as an in-
21 house counsel. Because she's an attorney I talk to her
22 far more than I talk to any other client. I talk to
23 her numerous times daily and I don't do almost
24 anything in this case without running it by her and
25 having her review documents because she is an

1 PROCEEDINGS

20

2 attorney.

3 So I suggest that my stipulation that has not
4 attorneys' eyes only provision in it is a good
5 compromise and so we should either have one without an
6 attorneys' eyes only category at all, but if do then
7 my client should have access to them. And I'd like to
8 get this resolved so I can get some documents, we only
9 have a 40 day window, excuse me, a 4 month window,
10 it's 3 or 4, I don't remember, to collect discovery
11 and, like I said, I served those over a month ago and
12 I still don't have a single document.

13 MR. PLOURDE: Your Honor, may I briefly be
14 heard on that?

15 THE COURT: Who is this?

16 MR. PLOURDE: Eric Plourde for Crazy Maple.

17 MR. PASSIN: Eric, by the way, I pointed out
18 that you were not included, I didn't serve you.

19 MR. PLOURDE: Absolutely. And I just briefly,
20 Mr. Passin can make his argument, I just want to note
21 that, Your Honor, I just want to make sure that our
22 client is not being prejudiced by some of the other
23 activity that may have happened. We just got document
24 requests a few days ago, we're still, you know, we're
25 sort of behind in the process.

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PROCEEDINGS

21

2 I will say, and I can't speak for the other
3 defendants, but just from my client's perspective, we are
4 okay with some kind of compromise, whether it's eliminating
5 the in-house counsel language, whether it is a meet and
6 confer requirement before designating the documents AEO.
7 All I'm concerned about is having something where I
8 can give my client the confidence that if something
9 important comes up, that we have recourse within the
10 existence of the protective order. I think that's very
11 important, at least for my client, I think the other
12 defendants agree, but I just mention it because, again,
13 we're a little newer on the case, so.

14 MS. WOLFF: Your Honor --

15 MR. KOONCE: Your Honor --

16 MS. WOLFF: Oh, I'm sorry, I thought you were
17 done, apologize.

18 MR. KOONCE: Oh, this was actually Lance
19 Koonce, Nancy. Your Honor, generally, I just wanted
20 to just for the record to say that we are, our
21 clients, my client here is a small literary agency and
22 the principal of the agency was also named
23 individually. They don't have in-house counsel so that
24 aspect of the protective order is not really at issue
25 for my client. I would reiterate, I think we're along

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PROCEEDINGS

22

2 the same lines as counsel for Crazy Maple. We are
3 most concerned with the ability to mark the occasional
4 document that we find that is highly sensitive and in
5 a narrow sense of what highly sensitive is. My
6 thinking has been that that would likely be limited to
7 very sensitive financial documents and especially
8 forward looking at materials that would disclose in any
9 way, you know, what the agency is doing with, either with
10 its other authors or what it might do, what it might do in
11 the future, what it's making on, in royalties. So that
12 might be something that they would consider attorneys'
13 eyes only.

14 Obviously, if counsel for plaintiff at some
15 point needs to, after seeing all the documents that are
16 produced, if some of those, if anything has been
17 marked attorneys' eyes only that's financial
18 information that he needs to discuss at some level
19 with his client, there are provisions for, you know,
20 for addressing the attorneys' eyes only designation
21 that can be addressed.

22 But I, I think we would also be comfortable
23 with an attorneys' eyes only provision that was, you
24 know, that was fairly narrowly tailored and did not
25 include, you know, to the extent the language that was

1 PROCEEDINGS 23

2 proposed would have included things like the
3 development of, you know, the creation of a work, I
4 don't think we would anticipate marking anything, at
5 least from the agency side, as attorneys' eyes only.
6 So if it needed clarification around that type of
7 language I think we'd be amenable to that.

8 THE COURT: Thank you.

9 MS. WOLFF: Your Honor, this is Nancy Wolff.
10 I just wanted to add that if we did designate
11 something attorneys' eyes only and the plaintiff
12 objects, we have a meet and confer already in this
13 agreement as well as if we can't resolve it, you know,
14 to seek guidance from the magistrate.

15 And in terms of documents, document responses
16 were only due last week, we completed all of them, and
17 I would like to note that we have yet to receive from
18 the plaintiff any of the manuscripts at all that the
19 plaintiff believes were used in the creation of these
20 books. And they were filed with the Copyright Office
21 months and months ago so they're not confidential,
22 they're public, and we don't even have access to those
23 which is --

24 MR. PASSIN: Your Honor, may I -- I'm sorry.

25 THE COURT: All right, everyone needs to

1

PROCEEDINGS

24

2 remember that having phone calls at this stage in the
3 pandemic is more of a privilege than a public health
4 requirement, and so if parties keep speaking over one
5 another or don't announce who's speaking then we'll
6 just move to an in court conference. So I need people
7 to be more respectful of one another. So, Ms. Wolff,
8 I don't know if you're done speaking?

9

MS. WOLFF: Yes, thank you.

10

THE COURT: Okay.

11

MR. PASSIN: Your Honor, may I be heard, it's
12 Mark Passin.

13

THE COURT: Yes.

14

MR. PASSIN: In conclusion, I just wanted to
15 add that I believe there should be no attorneys' eyes
16 only provision. If there is one it should allow
17 counsel, including my client, to see it and, by the
18 way, that resolves the problem with co-defendants not
19 wanting everyone to see their works. And if, despite
20 my urging, there is an attorneys' eyes only provision,
21 it should exclude any of the works or any financial
22 information. Because, again, I'm hearing people talk
23 about royalties and financial information, I have to
24 be able to disclose to my client all money that's
25 earned by each one of the defendants so I can advise her

1 PROCEEDINGS

25

2 regarding how to proceed and about any settlement.

3 THE COURT: Okay, thank you, everybody. You know,
4 as I said from the outset, in my experience attorneys' eyes
5 only provisions A) make things much more complicated than
6 they're usually worth, and B) are really appropriate when
7 there are sort of competitor issues and heightened
8 sensitivity about businesspeople that are adverse to one
9 another in a litigation using the litigation as an
10 opportunity to get tactical advantages. And that's just not
11 what's happening in this case. Everything that the
12 defendants have referenced just seems like things that they
13 want super confidentiality on but not that they need them to
14 be protected.

15 And so based on everything I've heard here I don't
16 think there is a basis or a need for an AEO provision. I
17 think it will make things unnecessarily complicate and,
18 again, it's not intended to be a supersized confidentiality
19 provision, it's intended when there are other interests than
20 the litigation interests that could potentially be
21 implicated and that's just not the case here. You know, so
22 the extent it is the case, vis-à-vis defendant, maybe there
23 does need to be a provision as far as sharing of documents
24 from one corporate defendant to another. Nobody really has
25 mentioned that as a particular problem, potentially Crazy

1 PROCEEDINGS

26

2 Maple referenced something.

3 And so if the parties want to go back to the
4 drawing board and come up with provisions that protect other
5 defendants from one another because they're in a
6 competitive stance and they don't want to share their
7 own strategic thinking and business thinking, I would
8 understand that. And potentially the way to resolve
9 that desire is to have an attorneys' eyes only
10 provision but to deem the plaintiff an attorney as her
11 own in-house counsel, as plaintiff's counsel
12 represents. And that may be a way for the defendants
13 vis-à-vis other defendants to have some protection from
14 strategic disclosures. But vis-à-vis the plaintiff, I
15 haven't heard anything thus far that makes me think that the
16 burdens of having an AEO provision are outweighed or, excuse
17 me, outweigh any benefits. So the application is denied.

18 MR. PLOURDE: Your Honor, may I be heard
19 briefly, this is Eric Pourel?

20 THE COURT: Sure.

21 MR. PLOURDE: There is, I just went back to
22 check my notes and if that's Your Honor's finding I
23 understand, there's one category of very particular
24 information that, frankly, I actually don't even think
25 is relevant in the case or I don't anticipate even

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PROCEEDINGS

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2 being requested to provide it, but it is something
3 that my client noted as being highly, highly sensitive
4 to their business which is source code for their game.
5 Again, I, you know, I look at this category as I can't
6 contemplate a way that it's necessarily relevant to
7 the case, however, if we go through the exercise, and
8 I don't think it's been requested but if it is, if we
9 object, if we end up producing it, that is I think
10 just one particular category I would ask that the
11 Court allow Crazy Maple to designate attorneys' eyes
12 only including keeping it from the plaintiff, just
13 given the highly sensitive nature of that source code.

14 THE COURT: Understood. So I think the better
15 way to proceed, rather than creating this provision
16 which I think is unnecessary in this case writ large,
17 and then having everybody try and pigeonhole their
18 document into it, is let's just wait and see what the
19 discovery requests are and what is produced. If, and
20 it sounds like it hasn't come up yet, your coding is
21 requested and you believe the rules require you to
22 produce it but you want more confidentiality, you
23 should just meet and confer with the a stipulation
24 related to that production or if you can't reach
25 agreement you can bring it to my attention. And that

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PROCEEDINGS

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2 goes for any other category of documents that the
3 defendants really feel like will create a, you know, are
4 being used for tactical reasons, not litigation reasons and
5 can potentially, you know, seriously affect people's
6 business. But I am not going to allow an AEO provision to
7 be used in the way it seems to be discussed with me today,
8 which is just a supersized confidentiality provision.

9 So the parties should meet and confer, it sounds
10 like there are two options I'm presenting to you, either
11 there's no AEO provision or to address the concerns of sort
12 of inter-defendant production, there is an AEO provision but
13 the plaintiff, herself, as a lawyer is entitled to review
14 those documents. And I'll just ask that the parties submit
15 to me for my signature a proposed protective order by next
16 Monday.

17 Otherwise, I know that Judge Torres set a case
18 management plan in this case and thereafter referred the
19 case to me. So going forward all discovery matters will be
20 in my court. So if you have discovery issues after a meet
21 and confer, you should file those with me.

22 In addition, if there is any interest in talking
23 about settlement I'm happy to get engaged. I will warn you
24 that my calendar fills up very quickly, and so right now I'm
25 scheduling settlement conferences for early October. So

1 PROCEEDINGS

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2 if you think you want to have a settlement conference
3 with me, it would be in your interest to get that on
4 my calendar as soon as possible, even if closer to the
5 date you realize it's not going to be productive and
6 you want to cancel it I'm happy to get a day back, but
7 it's very hard for me to squeeze people in last minute
8 and I'm not going to move litigation deadlines to
9 accommodate late requests. So just keep that in mind
10 and if you do want to schedule a conference you can
11 just email my courtroom deputy.

12 Alternatively, if you want to have supervised
13 settlement discussions before I'm available, I can
14 also refer you to our mediation program. And I can
15 even make a request for someone who might have some IP
16 expertise that might be appropriate for a case like
17 this. So I'll just leave that for the parties to
18 contact us.

19 MR. PASSIN: Thank you very much, Your Honor.

20 THE COURT: Okay, anything further from the
21 plaintiff?

22 MR. PASSIN: No, thank you very much, Your
23 Honor.

24 THE COURT: All right, anything further from
25 any of the defendants?

1 PROCEEDINGS 30

2 MR. KOONCE: No, thank you, Your Honor.

3 MR. PLOURDE: Thank you, Your Honor. No, Your
4 Honor.

5 MS. WOLFF: No, Your Honor, thank you.

6 THE COURT: Thank you, everybody, we're
7 adjourned.

8 (Whereupon the matter is adjourned.)

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2 C E R T I F I C A T E

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4 I, Carole Ludwig, certify that the foregoing
5 transcript of proceedings in the United States District
6 Court, Southern District of New York, Freeman versus Deebbs-
7 Elkenaney, et al., Docket #22cv2435, was prepared using PC-
8 based transcription software and is a true and accurate
9 record of the proceedings.

10

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12 Signature Carole Ludwig

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Carole Ludwig

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Date: January 17, 2023

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